

H. HARRY BRESKY
200 Boylston Street
Chestnut Hill, Massachusetts 02167

9-269A028
Date SEP 26 1979
Fee \$ 50.00

10847

RECORDATION NO. Filed 1425

ICC Washington, D.C.

SEP 26 1979 - 10 55 AM September 24, 1979

INTERSTATE COMMERCE COMMISSION

Secretary of Interstate
Commerce Commission
Washington, D.C. 20423

Re: Recordation of Mortgage and Security Agreement dated
September 24, 1979 between Modrail Corporation and
H. Harry Bresky, (herein the "Mortgage")

Dear Sir:

I am delivering to you with this transmittal letter the following
materials for recording:

- 1) The original Mortgage dated September 24, 1979;
- 2) Two certified true copies of the original Mortgage
with attached Affidavits of a notary public; and
- 3) A check in the amount of \$50.00 to cover recording
expenses.

The names and addresses of the parties to the transaction evidenced
by the Mortgage are as follows:

- 1) The Mortgagor: MODRAIL CORPORATION
30 Brookside Road
West Orange, New Jersey
- 2) The Mortgagee: H. HARRY BRESKY
200 Boylston Street
Chestnut Hill, Massachusetts 02167

RECEIVED
SEP 26 10 45 AM '79
I.C.C.
OPERATION DR.

A general description of the equipment covered by the Mortgage
is as follows:

Twenty-eight (28) Box Cars, numbered 801, 802,
803, 804, 805, 806, 807, 808, 809, 810, 811,
812, 813, 814, 815, 816, 817, 818, 819, 820,
821, 822, 823, 824, 825, 826, 827, and 828.

I, H. Harry Bresky, hereby represent and warrant that I am one of
the parties having knowledge of the matters set forth in the Mortgage.

Done Lilly
C. Oursley


Secretary of the Interstate
Commerce Commission
Page Two

Kindly return the original Mortgage submitted herewith to:

Marshall L. Tutun, Esq.
Widett, Slater & Goldman, P.C.
Sixty State Street
Boston, Massachusetts 02109

Thank you.

Very truly yours,



H. Harry Bresky

SEP 26 1979 -10 55 AM

INTERSTATE COMMERCE COMMISSION

MORTGAGE AND SECURITY AGREEMENT

AGREEMENT made this 24th day of September, 1979 by and between Modrail Corporation, a New Jersey corporation with an usual place of business in Montclair, New Jersey (herein "Debtor") and H. Harry Bresky, having with an usual place of business in Chestnut Hill, Massachusetts (herein "Secured Party"). *E.S. 10/2/79*

W I T N E S S E T H:

In consideration of One Dollar (\$1.00) and other good and valuable consideration paid by Secured Party to Debtor, the receipt of which is hereby acknowledged, and in consideration of extensions of credit and financial accommodations heretofore or hereafter granted by Secured Party to Debtor, Debtor and Secured Party hereby agree as follows:

1. As used herein, the following words shall have the following meanings:

(a) Collateral: The twenty-eight (28) ^{50 ton, 40 foot} railroad boxcars numbered 801 to 828 ~~and other railroad equipment~~ now leased by Debtor to New Hope and Ivyland Railroad Company under agreement dated January 19, 1976 and described on schedule A annexed hereto and all additions, attachments, accessories, accessions, replacements, repairs and substitutions thereto and therefore and all proceeds thereof, including, without limitation, the proceeds of fire and other insurance. *E.S. 10/2/79*

(b) Obligations: All debts, liabilities and obligations of Debtor to Secured Party of every kind and description (whether or not evidenced by a note or other instrument and whether or not for the payment of money) direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including, without limiting the generality of the foregoing: (1) any debt, liability or obligation of Debtor to others which Secured Party may have obtained by assignment or otherwise; (2) any liability of Debtor to Secured Party as a guarantor of the indebtedness or liabilities of others; (3) the indebtedness evidenced by a promissory note dated this date in the principal sum of ~~\$50,000~~ ^{\$100,000} made by Debtor to the order of Secured Party; and (4) all interest, fees, charges and expenses payable by Debtor hereunder. *E.S. 10/2/79*

2. Debtor grants to Secured Party a security interest in, and mortgages to Secured Party all of the Collateral, which security interest and mortgage is to secure the payment and performance of all of the Obligations.

3. Debtor hereby warrants, represents, covenants and agrees:

(a) The execution, delivery and performance of this mortgage and security agreement are within Debtor's corporate powers, have been duly authorized, are not in contravention of law or the terms of Debtor's charter, by-laws, or other incorporation papers, or of any indenture, agreement or undertaking to which Debtor is a party or by which it is bound.

(b) Except for the security interest and mortgage granted hereby and the security interest or mortgage held by Empire Bank, Debtor is, and as to Collateral to be acquired after the date hereof, will be the owner of the Collateral free from any adverse lien, security interest or encumbrance; and Debtor agrees that it will defend the Collateral and proceeds thereof against the claims and demands of any person except Empire Bank at any time claiming the same or any interest therein.

(c) Debtor has an office at 207 Bellevue Avenue, P.O. Box 832, Upper Montclair, New Jersey 07042. All Collateral of Debtor are and will be kept in the hands of New Hope and Ivyland Railroad Company.

(d) Whether or not any change in location violates the terms hereof, Debtor shall notify Secured Party not less than ten (10) days before any change is intended to be made in the foregoing addresses.

(e) All information furnished to Secured Party concerning any of the Collateral or otherwise is or will be at the time the same is furnished, accurate and correct in all material respects and complete in so far as completeness may be necessary to give Secured Party a true and accurate knowledge of the subject matter.

(f) Debtor shall at all reasonable times and from time to time allow Secured Party, by or through any of his officers, agents, attorneys or accountants, to examine or inspect the Collateral wherever located and to examine, inspect and make extracts from Debtor's books and records. Debtor shall do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Secured Party may require, to vest more completely in and assure to Secured Party his rights hereunder and in or to the Collateral.

(g) Debtor shall have and maintain insurance at all times with respect to all Collateral against risks of fire (including so-called extended coverage), theft, sprinkler leakage and other risks as Secured Party may require, in such form, for such periods and written by such companies as may be satisfactory to Secured Party, such insurance to be payable to and adjustable with Secured Party and Debtor as their interest may appear. All policies of insurance shall provide for not less than ten days' written minimum cancellation notice to Secured Party and at request of Secured Party shall be delivered to and held by him.

Secured Party may act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and endorsing any drafts. In the event of failure to provide insurance as herein provided, Secured Party may at Secured Party's option, (but shall not be obligated to) provide such insurance and Debtor shall pay to Secured Party, on demand, the cost thereof with interest at the rate of sixteen percent (16%) per annum.

4. Each and every statement of account transmitted by Secured Party to Debtor hereunder, whether in person, or by ordinary mail or otherwise, shall be final, conclusive and binding upon Debtor in all respects as to all loans, fees, interest charges, Collateral, payments, receipts, balances and all other matters reflected therein unless Debtor, within thirty days after the delivery or mailing thereof, shall give notice to Secured Party in writing of any objections which Debtor may have to any such statement of account; and in such event, only those items expressly objected to in such written notice shall be considered to be disputed by Debtor and all other items shall be binding as aforesaid.

5. (a) Except for the mortgage or security interest held by Empire Bank and the lease between Debtor and New Hope and Ivyland Railroad Company, Debtor will keep the Collateral free from any adverse lien, security interest or encumbrance, and in good condition and will not waste or destroy any of the same. Debtor will not use the Collateral in violation of any statute or ordinance.

(b) Debtor will pay promptly when due all taxes and assessments upon the Collateral, upon the proceeds thereof, upon this Agreement or upon any note or notes evidencing Obligations.

(c) At its option, Secured Party may (but shall not be obligated to) discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Secured Party, on demand, for any payment made, or any expense incurred by Secured Party pursuant to the foregoing authorization with interest at the rate of sixteen percent (16%) per annum.

(d) Until default, Debtor may use the Collateral in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon but may not sell or otherwise dispose of any of the Collateral or any interest therein.

6. (a) At the request of Secured Party, Debtor will join with Secured Party in executing such instruments, agreements, mortgages or documents as may be required in order to file or record with the Interstate Commerce Commission Secured Party's interest in the Collateral, and one or more Financing Statements pursuant to the Uniform Commercial Code in form satisfactory to

Secured Party and will pay all costs and expenses, including, without limitation, filing and recording fees, mortgage, document or transfer taxes, correspondent's fees, and attorneys' fees incurred in filing or recording the same in all public offices where filing is deemed by Secured Party to be necessary or desirable. Secured Party is authorized by Debtor to file financing statements, amendments thereto, and continuation statements therefor, with respect to this Security Agreement without the signatures of Debtor wherever such filing is permitted by law. If any Collateral is in or shall hereafter come into the possession, or control of any of the Debtor's agents or bailees, upon the request of Secured Party, Debtor shall notify such agents or bailees of the security interest granted herein and, upon request, instruct them to hold such Collateral for the account of and subject to the instructions of the Secured Party. If documents are issued or outstanding with respect to any of the Collateral, Debtor will cause the interest of Secured Party to be properly noted thereon at Debtor's expense.

(b) Except for the mortgage or security agreement between Debtor and Empire Bank and the Lease between Debtor and New Hope and Ivyland Railroad Company or financing statements in connection therewith, without the written consent of Secured Party, Debtor will not permit any Financing Statement, mortgage, security agreement or other encumbrance covering any Collateral.

7. Any and all Obligations shall at the option of Secured Party and notwithstanding any time or credit allowed by any instrument or invoice evidencing a liability, become immediately due and payable without notice or demand upon the occurrence of any of the following events of default:

(a) Default in the payment or performance of any of the Obligations;

(b) Any warranty, representation or statement made or furnished to Secured Party by or on behalf of Debtor proves to have been false in any material respect when made or furnished;

(c) Any event which results in the acceleration of the maturity of the indebtedness of Debtor to others under any indenture, agreement, undertaking or otherwise;

(d) Loss, theft, damage, destruction, sale or encumbrance to or of any of the Collateral, or the making of any levy, seizure or attachment thereof or thereon;

(e) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of Debtor or any guarantor or surety for Debtor, assignment for the benefit of creditors by, execution of a trust mortgage by, the recording or existence of any lien for any unpaid taxes or any other cause whatsoever, against, the calling of a meeting of creditors of, or the commencement of any

proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor or surety for Debtor, or the termination by any guarantor of Debtor's obligations of such guarantee;

(f) Default in any obligation, covenant or liability to Secured Party of any guarantor or surety for Debtor; or

(g) If Secured Party shall deem himself to be insecure.

8. Upon the occurrence of any such event of default, and at any time thereafter, Secured Party shall have the rights and remedies of a secured party under the Uniform Commercial Code in addition to the rights and remedies provided herein or in any other instrument or paper executed by Debtor. Secured Party shall have the right at all times after the occurrence of an event of default, to enter, with or without legal process and without being deemed guilty of any manner of trespass, any premises where the Collateral may be found, to take possession of the Collateral and to maintain such possession where the Collateral is located or to remove the Collateral or any part thereof to such other places as Secured Party may desire. Debtor agrees not to resist or interfere with any such action by Secured Party. Unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if such notice is mailed by certified mail, postage prepaid, to the address of Debtor shown in paragraph 3(c) of this Agreement at least five days before the time of the sale or disposition. Expenses of retaking, holding, selling and the like shall include reasonable attorney's fees and expenses.

9. Any and all deposits or other sums at any time credited by or due from Secured Party to Debtor shall at all times constitute additional security for Obligations and may be set off against any Obligations at any time whether or not they are then due or other security held by Secured Party is considered by Secured Party to be adequate. Any and all instruments, documents, policies and certificates of insurance, securities, goods, accounts receivable, choses in action, chattel paper, cash, property and the proceeds thereof (whether or not the same are Collateral or proceeds thereof hereunder) owned by Debtor or in which Debtor has an interest, which now or hereafter are at any time in possession or control of Secured Party or in transit by mail or carrier to or from Secured Party or in the possession of any third party acting in Secured Party's behalf, without regard to whether Secured Party received the same in pledge, for safekeeping, as agent for collection or transmission or otherwise or whether Secured Party has conditionally released the same, shall

constitute additional security for Obligations and may be applied at any time to Obligations which are then owing, whether due or not due.

10. Debtor shall pay to Secured Party on demand any and all expenses, including but not limited to, all attorneys' fees and expenses (whether or not any legal action or proceeding is commenced), and all other expenses of like or unlike nature which may be expended or incurred by Secured Party to obtain or enforce any Obligations, either as against Debtor or any guarantor or surety of Debtor, or in the prosecution or defense of any action, or concerning any matter growing out of or connected with the subject matter of this Agreement, the Obligations or the Collateral or any of Secured Party's rights or interests therein or thereto, including without limiting the generality of the foregoing, any counsel fees or expenses incurred in any bankruptcy or insolvency proceedings.

11. Secured Party shall not be deemed to have waived any of Secured Party's rights hereunder or under any other agreement, instrument or paper signed by Debtor unless such waiver be in writing and signed by Secured Party. No delay or omission on the part of Secured Party in exercising any right shall operate as waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All Secured Party's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised separately or concurrently. Debtor agrees that Secured Party is not and shall not be obligated to exercise any particular right or remedy prior to the exercise of any other right or remedy. Any demand upon, or notice to Debtor that Secured Party may elect to give shall be effective when deposited in the mails or delivered to a telegraph company addressed to Debtor at the address shown in paragraph 3 (c) of this Agreement, as modified by any notice given pursuant thereto. Demands or notices addressed to Debtor's address at which Secured Party customarily communicates with Debtor shall also be effective. If at any time or times, by assignment or otherwise, Secured Party transfers any Obligations and Collateral or other security therefor, such transfer shall carry with it Secured Party's powers and rights under this Agreement with respect to the Obligations and Collateral or other security transferred and the transferee shall become vested with said powers and rights, whether or not they are specifically referred to in the transfer. If and to the extent that Secured Party retains any other Obligation or Collateral or other security, Secured Party will continue to have the rights and powers herein set forth with respect thereto.

12. All provisions herein shall inure to, and become binding upon the heirs, executors, administrators, successors, representatives, receivers, trustees and assigns of the parties. Debtor hereby waives notice of default, and presentment, demand, protest, and notice of dishonor as to any instrument. Each of

the parties hereto does hereby waive trial by jury and the right to trial by jury in any action or proceeding, of any kind or nature, in any Court, whether arising out of, under or by reason of this Agreement or any transaction hereunder, or by reason of any other cause or dispute whatever between them, of any kind or nature.

13. Neither Debtor nor Secured Party shall be bound by any undertaking not expressed in writing. This Agreement, all amendments thereto, all supplements thereof, and all acts, transactions, agreements, certificates, assignments and transfers thereunder, and all rights of the parties thereto, shall be governed as to their validity, enforcement, construction and effect, and in all other respects, by the law of the Commonwealth of ~~Massachusetts~~ *Pennsylvania*. This Agreement shall become effective when executed by Debtor.


14. It is further understood and agreed by the parties hereto that if any of the provisions of this Agreement shall contravene, or be invalid under, the laws of the particular state, country or jurisdiction where used, such contravention or invalidity shall not invalidate the whole agreement, but it shall be construed as if not containing the particular provision or provisions held to be invalid in the said particular state, country or jurisdiction, and the rights and obligations of the parties shall be construed and enforced accordingly.

15. Debtor further agrees to execute and deliver to the Secured Party any instrument or instruments necessary, proper, or convenient to the Secured Party, as determined by Secured Party, to carry into effect the terms, provisions and conditions of this Agreement, and/or to facilitate the collection of accounts, chattel paper and instruments which are proceeds of Inventory.

Executed as an instrument under seal this *24th* day of *September* 1979.

MODRAIL CORPORATION *E.L. AA/B*

By 
Edwin Stevens, President


H. Harry Bresky

STATE OF Mass.
COUNTY OF Suffolk, SS:

On this 24th day of September, 1979, before me personally appeared Edwin Stevens, to me personally known, who being by me duly sworn, says that he is the President of Modrail Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Alan I. Falk
My commission expires _____

ALAN I. FALK, Notary Public
My Commission Expires Nov. 29, 1985

STATE OF Mass.
COUNTY OF Suffolk, SS:

On this 24th day of September, 1979; before me personally appeared H. Harry Bresky, to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

[SEAL]

Alan I. Falk
My commission expires _____

ALAN I. FALK, Notary Public
My Commission Expires Nov. 29, 1985

EXHIBIT "A"

BOX CAR NUMBERS

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